

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

TELADOC, INC., TELADOC	§	
PHYSICIANS, P.A., KYON HOOD, and	§	
EMMETTE A. CLARK,	§	
Plaintiffs,	§	
	§	
v.	§	Civil Action No. 1:15-cv-00343-RP
	§	
TEXAS MEDICAL BOARD, MICHAEL	§	
ARAMBULA, JULIE K. ATTEBURY,	§	
MANUEL G. GUAJARDO, JOHN R.	§	
GUERRA, J. SCOTT HOLLIDAY,	§	
MARGARET C. McNEESE, ALLAN N.	§	
SHULKIN, ROBERT B. SIMONSON,	§	
WYNNE M. SNOOTS, PAULEETE B.	§	
SOUTHARD, KARL W. SWANN,	§	
SURENDA K. VARMA, STANLEY S.	§	
WANG, and GEORGE WILLEFORD III,	§	
Individually and in their capacities as	§	
Members of the Texas Medical Board,	§	
Defendants.	§	

**DEFENDANTS' UNOPPOSED MOTION FOR EXTENSION OF TIME TO
ANSWER AND TO RESPOND TO PLAINTIFFS' APPLICATION FOR
PRELIMINARY INJUNCTION, AND TO EXCEED THE PAGE LIMITS FOR
OPPOSITION TO PRELIMINARY INJUNCTION**

TO THE HONORABLE ROBERT PITTMAN:

In support of an extension of time for the answer – on behalf of any defendants that are served by the date in question, and for the response to the plaintiffs' application for preliminary injunction (ECF doc. 10), and to exceed the page limits for the response, counsel for defendants respectfully submits the following.

I.

As of this writing, neither the undersigned nor the Texas Medical Board ("TMB") is aware of any defendant having been served. By this motion, counsel does not intend to enter an appearance for any individual capacity defendant who has not been served.

However, because the TMB is aware of the filing of the suit,¹ the application for preliminary injunction, and the May 21, 2015 setting for the injunction hearing, the defendants presume the time lines specified in the local rules are running.

If the answer date is calculated from the date of filing, an answer for at least some of the defendants is due May 21, 2015, which is also the date for the preliminary injunction hearing. If the due date is calculated from the date of filing, the response to the application for preliminary injunction would be due May 8, 2015. W.D. TEX. L.R. CV-7(e)(2).

II.

The undersigned has the task of composing a response on behalf of TMB *et al.* to a 166-paragraph complaint (doc. 1) and a 23-page application for injunction that is accompanied by 662 pages of exhibits.² While defense counsel and his office do have experience with anti-trust and Commerce Clause claims, these are not the most common kinds of actions brought against state agencies and require additional research.

While preparing for the response, hearing, and answer in this case, the undersigned has had the following commitments:

<i>LULAC v. Tex.</i> , No. 5:15-cv-00219-RP (W.D. Tex. – Austin)	Working with state agency personnel and conducting research in preparation for class certification discovery
<i>Abbott v. G.G.E.</i> , 2015 WL 1968262 (Tex. App. – Austin April 30, 2015)	Conferring with clients and OAG superiors and conducting research to decide the state's next course of action in the case
<i>U.S. v. Tex.</i> , C.A. No. 1:09-cv-00490-SS (W.D. Tex. – Austin)	Ongoing negotiations with U.S. Dept. of Justice regarding consent decree in suit concerning state facilities for individuals with intellectual and developmental disabilities
<i>American Academy of Implant Dentistry v. Parker</i> , C.A. No. 1:14-CV-191-SS (W.D. Tex. – Austin)	Completion of summary judgment briefing May 1, 2015

¹ A copy of the complaint was e-mailed to an assistant attorney general on the day it was filed.

² Not counting the exhibit cover pages.

III.

The undersigned conferred with Mr. Dow, counsel for plaintiffs by telephone and e-mail on May 4-5, 2015. Mr. Dow indicated that plaintiffs are not opposed to an extension until May 15th for the response to the application for injunction but inquired whether counsel could get the response filed by May 13th or 14th. The attorneys for the defendants agree to make every reasonable effort to file a response sooner than the 15th and in any event no later than 5:00 p.m. on the 15th.

When counsel conferred on the plaintiffs' unopposed motion to exceed the page limits in W.D. TEX. L.R. CV-7(d)(3) (doc. 11), plaintiffs' counsel indicated that the plaintiffs would reciprocate the defendants' non-opposition. The plaintiffs are not opposed to an extension to June 12, 2015 for the answer.

IV.

This motion is brought not for delay but to insure that the Court has the benefit of a thorough and careful analysis of the issues in this case.

Accordingly, it is respectfully requested that the defendants be allowed until May 15, 2015 to respond to the plaintiffs' application for a preliminary injunction, that they be allowed until June 12, 2015 to file their answer (on behalf of any defendants who have been served as of that time) to the plaintiffs' complaint, and that they be allowed to exceed the page limits for their response in opposition to the plaintiffs' application for a preliminary injunction.

Respectfully submitted,

KEN PAXTON
Attorney General of Texas

CHARLES E. ROY
First Assistant Attorney General

JAMES E. DAVIS
Deputy Attorney General for Civil Litigation

ANGELA V. COLMENERO
Division Chief

/s/ James C. Todd
JAMES C. TODD
Texas Bar No. 20094700
Assistant Attorney General
Office of the Attorney General
General Litigation Division-019
P.O. Box 12548, Capitol Station
Austin, Texas 78711-2548
(512) 463-2120; (512) 320-0667 FAX
Jim.Todd@texasattorneygeneral.gov
ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF CONFERENCE

I certify that, as recited in part **III** above, that I conferred on May 4-5, 2015 with opposing counsel concerning this motion, that the plaintiffs do not oppose the requested extensions and that the plaintiffs had previously indicated no opposition to exceeding the page limit on the injunction response.

/s/ James C. Todd
JAMES C. TODD
Assistant Attorney General

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been filed electronically with the Court on this the 5th day of May, 2015, which will provide a copy to:

James Matthew Dow
JACKSON WALKER L.L.P.
100 Congress Avenue, Suite 1100
Austin, Texas 78701
(512) 236-2000 (Telephone)
(512) 236-2002 (Facsimile)

George S. Cary
Leah Brannon
Drew Navikas
CLEARY GOTTLIEB STEEN & HAMILTON LLP
2000 Pennsylvania Avenue, NW
Washington, DC 20006
(202) 974-1500 (Telephone)
(202) 974-1999 (Facsimile)

ATTORNEYS FOR PLAINTIFFS

/s/ James C. Todd
JAMES C. TODD
Assistant Attorney General